

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 432 56 4271 D1
Issued to: Carlton Jerry Williams

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2346

Carlton Jerry Williams

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 17 May 1982, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman's document upon finding him guilty of misconduct. The specification found proved alleges that while serving under authority of the document above captioned, on or about 12 February 1982, Appellant wrongfully and fraudulently presented to the U.S. Coast Guard Marine Safety Office, Portland, Oregon, his Merchant Mariner's Document wrongfully altered in violation of 18 U.S.C. 2197 by the addition of a "Demac" endorsement, in an attempt to obtain a duplicate document with an endorsement to which he was not entitled.

The hearing was held at Seattle, Washington on 11 May 1982.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and the specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and eleven documentary exhibits.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and the specification has been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The decision was served on 18 May 1982. Appeal was timely filed on 9 June 1982 and perfected on 27 September 1982.

FINDINGS OF FACT

Appellant is the holder of Merchant Mariner's Document No. 432 56 4271 D1, which was issued to him by the U.S. Coast Guard at San

Francisco, California, on 24 November 1980. On 12 February 1982, Appellant presented his document at the U.S. Coast Guard Marine Safety Office, Portland, Oregon. He requested that a duplicate be issued to reflect his correct date of birth, 15 October 1936, rather than the date of 5 October 1980 which was listed on his document.

Appellant presented his document to LTJG William L. Carey, who noticed that the word "Demac" was included with the endorsements on the document. The document was mutilated. LTJG Carey asked Master Chief Petty Officer Michael Fryer, who had more experience in dealing with seamen's documents, to examine Appellant's document. Master Chief Fryer asked Appellant where he had received the "Demac" endorsement. Appellant stated that it was placed on the document when it was issued by the Coast Guard at San Francisco on 24 November 1980.

Examination of the document revealed that its plastic lamination had been separated from the paper document. The word "Demac" was entered in a type style which was different from all other typewritten entries. When the plastic laminate had been pulled away from the paper, it had "lifted" a portion of the ink from each typewritten entry except the word "Demac." When Appellant presented his document to LTHG Carey, he only stated that he needed a new document to correct his birthdate. He did not mention the existence of the "Demac" endorsement although, as he later stated to the Administrative Law Judge, he knew it "was on there" and that "it wasn't supposed to be on there."

At the hearing, LTJG Carey stated that he believed, but was not certain, that "Demac" stands for "Deck Engine Mechanic or Machinist." Also at the hearing, the Investigating Officer, LCDRK.B. Allen, argued to the Administrative Law Judge that "Demac" is slang aboard ships for Deck Engine Mechanic but that the term is not used on documents.

BASES OF APPEAL

This appeal has been taken from the Decision and Order of the Administrative Law Judge. Appellant asserts that the Administrative Law Judge erred because:

1. A violation of 18 U.S.C. 2197 was not shown because it was not substantiated by either a court conviction or by proof beyond a reasonable doubt;
2. It was not shown that Appellant had altered the document or had received it in an altered condition with the intent to unlawfully use it;

3. Appellant was found to have a false endorsement on his document although the word "Demac" is not an endorsement; and

4. Revocation is too severe a sanction.

APPEARANCE: Levison, Friedman, Vhugen, Duggan, Bland, and Horowitz; by Marsha J. Pechman.

OPINION

I

Appellant asserts that the standards of proof in this case required a showing that he had either been convicted of a violation of 18 U.S.C. 2197, or that his guilt had been proven beyond a reasonable doubt at the hearing. This assertion is without merit. The criminal standard of "beyond a reasonable doubt" is not applicable in proceedings, such as these, which are conducted against a license in accordance with the Administrative Procedures Act. Appeal Decisions 1376 (KING) and 1380 (BRANCH). The standard of proof for suspension and revocation proceedings is set forth in 5 U.S.C. 556(d) and 46 CFR 5.20-95(b). Findings must be supported by substantial evidence of a reliable and probative character. The Administrative Law Judge correctly applied this standard.

The fact that the specification recites that Appellant's acts were in violation of 18 U.S.C. 2197 does not change this. Misconduct is violation of a "formal, duly established rule." 46 CFR 5.05-20(a)(1). The statute shows the existence of the rule which Appellant's acts violated, an element of misconduct. It is not necessary to show that Appellant was ever convicted of this violation in a criminal trial or for the Administrative Law Judge to apply the standard of proof used in a criminal trial merely because this element is established by the existence of a criminal statute.

II

Appellant's second basis of appeal is without merit. He argues that the Coast Guard, in order to prove a charge of misconduct based upon a violation of 18 U.S.C. 2197, must show that he altered his document in violation of the second paragraph of the statute, or that he received or possessed a document which he was not lawfully entitled to hold with the intent to unlawfully use it in violation of the first paragraph of the statute.

Appellant was not charged under either the first or second paragraphs. Rather, his misconduct was charged under the third paragraph of the statute which prohibits the unlawful possession or

knowing use of an altered document. The record contains substantial evidence that the document had been altered after it had been issued by the Coast Guard and that Appellant knowingly used it in attempting to obtain a replacement document. This evidence included the document itself which, through physical examination, revealed that the alteration had been made after the document had been laminated and issued. The type style was different on the alteration and the rest of the document and the alteration was not "lifted" with the plastic laminate as were all the other typewritten entries. In addition, the Washington State Patrol Crime Laboratory report stated that the alteration had occurred subsequent to the other typewritten entries. It was not necessary to prove that Appellant performed the alteration. It was sufficient to show that he knowingly used the document in its altered condition. LTJG Carey testified that Appellant presented his altered document and requested that a duplicate be issued. Appellant admitted to the Judge that he knew that the word "Demac" was on there and that "it wasn't supposed to be on there." Thus, substantial evidence established that Appellant knowingly used his altered document and was, therefore, guilty of misconduct.

III

Appellant contends that he should not have been found to have a false endorsement on his document because the word "Demac" is not an endorsement. I disagree.

The Investigating Officer conceded at the hearing that the Coast Guard does not use the word "Demac" on documents which it issues. However, it is immaterial that the alteration inartfully used an incorrect abbreviation. Appellant's ignorance of Coast Guard terminology is not at issue. The term "Demac" is not a meaningless word to the merchant mariner. LTJG Carey testified that he believed that the term stands for "Deck Engine Mechanic or Machinist," which would have been a proper endorsement. 46 CFR 12.15-11 sets forth the endorsements which a qualified member of the engine department may hold, including the rating of "Deck Engine Mechanic." "Demac" is an obvious abbreviation for this rating and does not correspond to any other possible rating. It was entered in a space reserved for such endorsements. From the evidence presented, the Administrative Law Judge properly determined that Appellant had used an altered document which, although it did not contain the exact wording used by the Coast Guard, was altered so as to present the appearance that Appellant possessed a rating to which he was not entitled.

IV

Appellant contends that revocation of his document is an

excessive sanction and is not warranted by the offense of using an altered document. He argues that he did not use his altered document to secure employment nor to sail in a situation where the alteration would endanger others. I find Appellant's arguments to be unconvincing.

The fact that his attempt was unsuccessful does not change the seriousness of his actions. A person with a false endorsement on his document may be placed in a critical position aboard ship, although he is, in reality, unqualified. The entire ship and crew could well be endangered by such a person. Because of the serious threat to safety posed by alteration of documents, I believe revocation is appropriate. Appellant also argues that revocation of his document has eliminated his livelihood and created a severe hardship on his family. However, the need for a seaman to support his family must be considered subservient to the remedial purpose of these proceedings to promote safety at sea. See Appeal Decisions 2290 (DUGGINS) and 1516 (ALFONSO).

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative character. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge, dated at Seattle, Washington on 17 May 1982 is AFFIRMED.

J. S. GRACEY
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 30th day of March 1984